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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Mono)

In re HOLLY B., a Person Coming Under
the Juvenile Court Law.

MONO COUNTY DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

CLUSTER B.,

Defendant and Appellant.

C050087

(Super. Ct. No. 3SCJ1358)

Cluster B., father of the minor, appeals from the judgment of disposition. (Welf. & Inst. Code, §§ 358, 360, 395.)¹ Appellant contends the dependency petition failed to state facts upon which jurisdiction could be based, substantial evidence did not support the juvenile court's jurisdictional findings or

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

removal from appellant's custody, filing of an amended petition denied appellant due process and reasonable efforts to prevent removal were not made. We affirm.

FACTS

After suffering severe neglect and physical abuse as early as 1994 at the hands of her biological mother, the minor was placed with appellant in 1998. Problems arose in 1999 and 2000 and appellant's family was offered services in April 2004, but declined assistance until the minor was briefly detained in September 2004 for investigation of physical abuse at which time the minor's stepmother accepted services. Within a month, the Department of Social Services (DSS) filed a petition to remove the 12-year-old minor from the custody of appellant and the stepmother, alleging physical abuse and a pattern of conduct toward the minor which inflicted serious emotional damage upon her pursuant to section 300, subdivisions (a), (b) and (c). The court ordered the minor detained in October 2004.

According to the jurisdictional report, the minor had been sexually molested twice and had little counseling on that issue to help her cope, resulting in behaviors that were troubling to her family. Further, the appellant's methods used to discipline the minor were concerning both because of the recent physical abuse but also because of the emotional harm the discipline inflicted on her. The report noted that appellant had failed to protect the minor from harm, failed to actively parent the minor and recently decided to place the minor in a high level group

home for treatment without changing the family dynamics to which the minor would return.

An addendum contained statements from various witnesses in support of the petition. During the investigation at the minor's school which led to her removal, the minor was frightened when questioned about the recent incident of physical abuse and terrified at being placed in protective custody, yet did not feel safe to return home. When the stepmother was questioned later that same day, she stated the minor had kicked her and showed the sheriff's deputy her bruises. The addendum also contained the minor's statements from the September 2004 investigation during which the minor expressed gratitude at being removed from the home for the night and agitation at the prospect of return. During the April 2004 investigation, the minor stated if she got into trouble at home her stepmother would not speak to her and did not want the minor to speak for several days. The stepmother minimized the seriousness of the September 2004 incident and explained that the minor was a liar and a thief who needed constant supervision even in the bathroom. The stepmother appeared relieved that the minor was placed in protective custody. Witnesses noted that the minor was anxious and withdrawn in the stepmother's presence and responded differently when the stepmother was with her.

Two psychological evaluations of the minor were attached to the addendum. The first, by Dr. Glidden, occurred prior to the minor's removal and in the stepmother's presence. The second

evaluation, by Dr. Gimpel, took place after the minor's removal and without the stepmother present during the minor's interview. Each found significant behavioral disorders present, coupled with posttraumatic stress disorder (PTSD) and, while they differed on recommended treatment for the minor, agreed that appellant and the stepmother needed parent training.

In November 2004, the minor was moved from a local foster home to one in another county. The social worker continued to offer services to the family and assist in ongoing visitation. The court appointed a third expert to evaluate the minor.

According to an addendum in January 2005, face-to-face visitation was sporadic due to distance and weather. However, appellant and the minor did have telephone contact during which appellant persisted in discussing the case with the minor. An interim case plan proposing services for appellant and the stepmother pending the jurisdiction hearing was attached to the addendum. The court adopted the interim plan.

The third expert, Dr. Matthews, evaluated the minor in early 2005. This expert agreed with the other two that the minor likely suffered from PTSD and that appellant and the stepmother were not equipped to deal with her problems. Dr. Matthews recommended the inpatient treatment appellant previously identified as appropriate for the minor coupled with treatment for the family.

A third addendum, filed in April 2005, stated the minor had been moved to a new foster home in March and noted that the minor

had stated she wanted to move and could misbehave in order to bring about that result. The minor continued to have telephone and face-to-face visits with appellant. Appellant and the stepmother informed the social worker that the court had not ordered case plan compliance and they did not intend to comply with the plan or cooperate with DSS. The addendum stated that appellant did not accept that the minor had been mistreated by the stepmother and were "stuck in their anger," venting but not moving on. The social worker agreed that the minor misbehaved to get her way, tended to tell people what they wanted to hear and might not know what she really wanted. The minor truly cared about appellant and her stepmother, but they tended to make her feel guilty and responsible for DSS intervention and their own distress.

DSS also filed a disposition report noting that the minor's therapist did not yet recommend a group home placement and that the current foster mother saw the minor as basically a "regular kid" who had issues but did not need a group home. The report recommended placement in a therapeutic foster home with services for appellant, noting that appellant had not yet participated in any services.

In May 2005, DSS filed a subsequent petition which dropped the section 300, subdivision (a) ground for jurisdiction and added new allegations. The new petition alleged pursuant to section 300, subdivision (b): "The child has suffered, or there is a substantial risk that the child will suffer, serious

physical harm or illness, [¶] as a result of the failure or inability of [] her parent [] to supervise or protect the child adequately [and] [¶] as a result of the willful or negligent failure of the child's parent [] to supervise or protect the child adequately from the conduct of the custodian with whom the child has been left."

The petition stated the following facts in support of the general allegations:

"b-1 The minor is the biological child of S[.]J[.] and [appellant.] Prior to this intervention, the minor resided with her father, stepmother [], brother [] and J[.]R[.], father of the stepmother's grandson. The family resides in Coleville. At the time the original petition was filed and for much of the preceding thirty days, the father had been working in Florida.

"b-2 On October 3, 2004, [stepmother] administered twelve swats to [the minor's] buttock, while holding the minor's left upper arm, leaving bruises on her arm. On October 5, 2004, an investigation was conducted in regard to the above incident and the minor was taken into protective custody by Mono County Sheriff's Deputy Suzanne Sturdivant and released to Child Protective Services.

"b-3 On October 2, 2004, the stepmother slapped the minor in the face in a public setting, hard enough that the minor lost her footing.

"b-4 During the month of October 2004, [the stepmother] purposefully distributed a sensitive, confidential document that

was a psychological evaluation of [the minor] to the Mono County Sheriff's Department.

"b-5 On September 13, 2004, CPS received a report that the minor had a bump and bruise on her forehead as a result of [the stepmother] banging the minor's head with a cooking pot. The minor was taken into temporary custody for one night and services were offered to the stepmother. During this investigation, the stepmother related that the minor had been stripped down to her underwear by her older stepsister the day before as she was suspected of stealing. The minor was found to be wearing thong underwear, with an extra pair tucked inside, as well as a bra, which she was not permitted to wear.

"b-6 During the month of September, 2004, [the stepmother] purposefully provided false and misleading statements to Howard Glidden in regard to allegations of past abuse of [the minor] by her biological mother as well as in regard to [the minor's] conduct in an attempt to mislead Dr. Glidden into viewing [the minor] as more pathological than she really was.

"b-7 On August 30, 2004, during a Mono County Families in Partnership Family Team meeting, [the stepmother] stated that she and [appellant] had mounted a video camera in their home in order to view [the minor] in her bedroom. They removed the bedroom door in order to be able to monitor more adequately. [The stepmother] stated this was an attempt to supervise [the minor], as she said the minor is constantly misbehaving. The stepmother went on to relate that she and [appellant] put a small curtain up

over the bathroom door for minimal privacy and instructed [the minor] not to close the door in order that they could supervise [the minor's] movements in the bathroom as well. The stepmother related that the minor [] takes four hours to do the dinner dishes and that [the minor's] chore of doing the dinner dishes has been a serious source of ongoing family conflict for four years. The father and stepmother were offered services by CPS at this meeting.

"b-8 On April 19, 2004, a report of suspected child abuse was received indicating that [the minor] was being punished by having all of her belongings taken away from her, including her toothbrush and pillow. During the investigation, the family confirmed that another method used to punish [the minor] is by having her move rocks in the area surrounding the family home.

"b-9 On March 26, 2002, [the stepmother] informed a local mental health professional that [the minor] had been sexually abused by her biological mother, purposefully misrepresenting the truth and misleading the helping professional into believing that [the minor] was more pathological than she really was. [The stepmother] has informed Mono County Mental Health and Mono County Social Services of the same allegations.

"b-10 On March 18, 2002, [the stepmother] informed a local mental health professional that [the minor] had been given wine and whiskey in a baby bottle misrepresenting the truth and misleading the helping professional into believing that the minor

had sustained worse injuries than she actually had at the hands of her biological mother.

"b-11 In 2002, the stepmother and [appellant] sent the minor to school without a lunch on repeated occasions and directed school staff not to give her a lunch, stating the minor was capable of packing her own lunch and if she did not choose to do so, she should not be fed by the school.

"b-12 On March 20, 2000, Mono County CPS investigated a report of suspected child abuse due to [the stepmother] putting masking tape over [the minor's] mouth in an X shape. The report indicated that [the minor] is in continual fear of her stepmother, as everything had to be earned, lunch, clothes, birthdays, etc. Although the minor laughed when discussing this incident with the CPS social worker, the report was substantiated. The minor was age seven at the time.

"b-13 On August 31, 1999, a report of suspected child abuse was received by Mono County CPS, indicating the minor [] had been molested by a 16 year old male, who was residing in the home. At the time of the investigation, the male had moved out of the [] home. The minor was age six at the time of this molest.

"b-14 Due to the pattern of maltreatment the minor has received over the years as demonstrated above, the child is suffering or is at substantial risk of suffering serious emotional damage as evidenced by aggressive behavior towards others as she has repeatedly stolen money from her relatives to give away to children at school and according to [the

stepmother], [the minor] hit the stepmother on October 3, 2004, leaving bruises on [the stepmother's] arms.

"b-15 The minor [] and her brother [] were the subjects of a previous WIC 300 dependency matter in Fresno County, which was dismissed in 1998. That case in its entirety as well as the corresponding orders of the Court are hereby [sic] incorporated by reference herein. [The stepmother] states there is a court order prohibiting contact between the biological mother and [the minor] or [her brother.]

"b-16 Both of [the minor's] biological parents have failed to protect her from the above described abuse."

The petition further alleged pursuant to section 300, subdivision (c): "The child is suffering, or is at substantial risk of suffering, serious emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others. [¶] as a result of the conduct of the parent or guardian [and] [¶] because the child has no parent or guardian capable of providing appropriate care." The facts alleged to support section 300, subdivision (b) were incorporated by reference in support of these allegations as well. The second ground of the section 300, subdivision (b) allegations, i.e., negligent failure to protect, and the factual allegations contained in items b-3, b-4, b-6, b-9 and b-10 were new.

At the jurisdictional hearing, appellant moved to strike or for a continuance due to the new factual allegations in the petition but did not challenge the new ground asserted under

section 300, subdivision (b). The court ordered that the new petition would supersede the original petition and took the motion to strike under submission. Subsequently, when the court addressed the motion, DSS moved to dismiss allegations b-4 and b-10 and the court granted the request. Appellant submitted on b-3 which the court allowed in. The court struck b-9 due to lack of proof and allowed b-6, finding appellant had notice of the facts since there was adequate notice of factual issues relating to Dr. Glidden's report and what he relied upon in his evaluation.

The therapist who had worked with the minor from January 2004 until the minor's removal from the home in October 2004, testified that, at the intake interview, the stepmother did most of the talking and would not let the minor answer questions. On October 4, 2004, the therapist arrived at the minor's class for their session and was told that appellant had discontinued the therapy sessions. She went into the classroom to reassure the minor, who told her the stepmother had spanked her the day before and showed her bruises from being grabbed by the arm when the stepmother hit her. The therapist took photographs of the bruises and reported the matter to DSS. The therapist also testified she had seen bruising and a bump on the minor's head in September 2004 following an incident in which the stepmother hit the minor in the head with a pot. The minor had been very reluctant to discuss the incident. The therapist stated the minor told her about Dr. Glidden's evaluation and that her brother and stepmother harassed and degraded her on the way home

based on the evaluation. The therapist believed the minor would benefit from a structured environment in a foster family to experience normal family life and learn social skills.

Each of the three experts who evaluated the minor also testified. Dr. Gimpel reiterated her diagnosis of PTSD and reactive attachment disorder and believed the minor suffered from serious emotional distress caused by appellant and the stepmother. She noted that the minor's punishments were always extreme and the family's expectations for a child her age were unrealistic. Dr. Gimpel said the minor told her she was never praised for a good job because she never did any job well enough. In Dr. Gimpel's opinion, this state of affairs had a major impact on the minor's self-esteem. Dr. Gimpel believed what the minor needed was a warm, loving supportive home in a lower level group home or foster care, not inpatient treatment. She further testified that, during the period of services under a treatment plan developed with the family prior to removal, the stepmother mostly wanted the minor out of the house. Dr. Gimpel believed the minor would have problems until she had a sense of self and felt safe and, if she were successful in her current foster home, she would not need a higher level of care. According to Dr. Gimpel, the minor required trained and highly skilled parenting and that appellant and the stepmother could do the necessary parent training in their home but they had not chosen to do so. She testified that both parenting and substance abuse

treatment had been recommended to appellant but appellant had not taken advantage of the services.

Dr. Matthews evaluated the minor in January 2005 and diagnosed her with PTSD and attention deficit disorder (ADD). He recommended inpatient treatment and treatment and education for the family. He believed the minor needed eight months or more of treatment in a program not a foster home. Dr. Matthews's evaluation was based, in part, on the minor's behavior in her second foster home. He stated he did not know when evaluating the minor that she consciously acted out in her second foster home in order to be moved. He observed that appellant and the stepmother lacked the parenting skills to address the minor's problems.

Dr. Glidden evaluated the minor in September 2004 on an education referral. According to his report the minor, who was interviewed in the stepmother's presence, stated she had stolen an electronic device from her current teacher. The stepmother told him that the minor had stolen over \$300 in cash and over \$2,000 in jewelry; threatened her daily, destroyed everything she owned; and informed school personnel that the stepmother struck her with a pot and recanted the story. He diagnosed the minor as suffering from a mild conduct disorder and ADD. He recommended inpatient behavioral modification treatment because her problems were long-standing. Dr. Glidden believed the minor should be out of the home because both sides needed a break and the minor needed a high degree of structure with a trained professional.

He testified it was important to have family involvement and treatment because all needed to learn the necessary interaction skills, the parents needed to see good in the minor and she needed to see she was not being taken advantage of.

The minor testified that in October 2004, she had a bruise on her arm when her stepmother grabbed her. Further, she recalled that, at a wedding she attended with her stepmother about the same time, her stepmother hit her on the head but testified that it was a soft hit because her stepmother would not hit her hard in public. In September 2004 she had a bump on her head because her stepmother got tired of her not doing dishes well, poured the water from a soaking pot over her and slammed the pot into her head. The minor was worried about the water in the kitchen, not the bump on her head. She testified her stepsister accused her of stealing rings and she had to get undressed for the stepsister to search her. The minor testified her parents monitored her at home with a camera in her room and if she unplugged it, she got into trouble. She further testified her bedroom door was removed and she was required to leave the bathroom door open with only a towel hung for privacy because her parents did not trust her. The minor stated she was once punished by having all her belongings except her mattress taken away and anything else that was left in the room she was not allowed to touch. She said the sheriff was called when she stole \$70 and when she took a lock off a suitcase stored in her room because she was curious what was inside. She returned the money

and found nothing exciting in the suitcase. She was also accused of stealing a ring but did not do so and the ring was found. The minor testified she wanted to return home although she was nervous about it and thought it might be better than before because maybe appellant wanted her to come home. The minor testified she liked her current foster family because it was like a normal family. The minor admitted she has lied but said she had stopped doing that and had changed.

The nurse from the minor's school testified she began working with the minor in 1997 and, over time, developed concerns about her nutrition. The nurse talked to the stepmother who told her that, according to the minor's counselor, the minor could be punished by getting no lunch if she did not get up early enough to prepare it herself for the day. The nurse called the counselor who said that was not the case. After discussions with the principal, the nurse decided to cover the cost of the minor's lunch herself when the minor came without lunch and told the stepmother of her decision. Thereafter, the minor began coming to school with lunch. Due to the stepmother's complaints about her actions, the nurse was told not to have contact with the minor without another adult present. She has seen the minor recently and has noticed the minor is now bright and smiling whereas before removal the minor was very withdrawn and guarded.

A family friend, who was married in early October 2004, testified the stepmother and the minor were at the wedding helping the caterer. The friend came upon them and observed the

stepmother slap the minor in the head hard enough for her to hear it. She testified that the stepmother was loving toward her own grandchildren but gruff with the minor.

The school bus driver, in whom the minor had come to confide over the five years of bus rides, testified she would notice on her return route that the minor was still standing at the bus stop 10 to 15 minutes after she was dropped off. When she asked the minor why, the minor finally told her that she did not want to go home because she had so many chores at home and if she did not do them she would get belted. Eventually, the family moved to a new home which was visible from the road on the outward portion of the route and twice when the minor saw only the stepmother's car at home, she begged not to be let off the bus. Both times the bus driver took her back to school. The second time this happened was early October 2004. The bus driver further testified that the minor's statements about being punished were different when the stepmother was present. The bus driver stated she spoke to the stepmother once about the minor's misbehavior on the bus but did not do so again because the stepmother threatened to "beat the crap" out of the minor if she got in trouble on the bus.

The minor's first foster mother testified she volunteered to take the minor when the minor was removed from home because her daughter was the minor's friend and asked her to. She viewed the minor as a sweet and loving child who had been through a lot of pain and suffering. She eventually asked to have the minor

removed because the minor needed more than she could provide and the minor's level of sexual sophistication was a negative influence on her own child.

The minor's first and fourth grade teacher testified the stepmother checked on the minor in first grade. When the stepmother came in the room, the minor became subservient, intimidated and afraid. The stepmother came in with the minor only once in the fourth grade for a meeting. The minor was very withdrawn. The stepmother asked how the minor was doing and the teacher responded that the minor had been talkative. The stepmother said she would take care of that. The teacher briefly left the room and when she returned, the stepmother had placed tape in an X shape across the minor's mouth, upsetting and embarrassing the minor in front of her friends.

The minor's special day class teacher from March to November 2004, testified the minor had not taken any electronic device from him or the other male teacher so far as he knew. The teacher further testified he was not at school on October 4, 2004, but that on October 5, 2004 he saw a bruise on the minor's arm which looked like a handprint. He stated that a month earlier, the minor had a bump and discoloration on her forehead which the minor said had been inflicted by the stepmother with a pan.

A Sheriff's deputy testified that he responded to calls at appellant's home between August 15, 2004 and October 5, 2004. In August there was a report that the minor took money from a family

friend and the stepmother wanted him to file a report. When he arrived the money had been recovered and the minor admitted the theft. In September 2004 he investigated a report at appellant's residence of lost property, i.e., a ring which had been in a cup seen in the minor's possession. The deputy testified he and the minor searched but did not find the ring and was later told the ring was recovered. Again in September 2004, the deputy was dispatched to appellant's residence on a report of grand theft of property from the stepmother's daughter. The minor was accused of stealing two rings. He was unable to speak to the minor at that time but the victim told him she strip-searched the minor to look for the rings. Finally, on October 4, 2004, the stepmother wanted to file a report of vandalism because the lock on a suitcase stored in the minor's room had been broken off and the minor admitted doing it. The stepmother told the deputy that "shit was going to hit the fan" and that he should expect a call from Child Protective Services. The deputy understood this to mean that the minor was going to get spanked when she got home and knew it.

The social worker testified about reasons for the minor's moves and inconsistent therapy in her out-of-county placement. Although the social worker did look for a therapeutic foster home, the social worker placed the minor in her current home on an emergency basis and the minor would reside there until the end of the school year.

The principal of the minor's school testified about an incident where the minor admitted a theft and told him she was afraid to go home because she was going to be punished with a belt. He believed the minor's parents lacked the skills to deal with her.

Appellant testified, explaining his view of each of the allegations in the petition.

Mr. Rendon, an extended family member, testified he witnessed the stepmother spank the minor the day after the wedding. The stepmother grabbed the minor by the arm and "kind of swatted her on the butt." In Mr. Rendon's opinion the incident wasn't anything really violent and he did not think the minor was hurt.

The emergency response worker for the April 2004 referral testified the minor was punished for falling on and damaging the stepmother's computer by having all her belongings taken away. Because the parents chose to meet her at the school rather than at the home, the worker was unable to see where the incident took place but in her first contact with the family was willing to give them the benefit of the doubt although she felt the punishment was odd. In a subsequent contact at the August 2004 meeting, no one told the parents that the video monitoring of the minor was acceptable. The notes of the meeting reflected that the parents viewed the minor as the problem and wondered if there was some kind of placement for her.

At the close of the evidence, the parties stipulated that the Willow Springs group facility, identified by appellant as a possible placement for the minor, had confirmed insurance coverage but that actual placement of the minor for treatment there would require pre-authorization from the insurance carrier and the facility's approval of the clinical criteria.

The court sustained the petition on both grounds, finding the minor had suffered emotional damage as a result of either parental conduct or inability of the parent to provide adequate treatment. The court further found that not making the finding would place the minor at serious risk of suffering further severe emotional damage. The court also found the minor was at risk of suffering substantial physical harm due to the escalating instances of abuse and appellant's failure to acknowledge the impropriety of the stepmother's actions, although serious physical harm had not yet actually been inflicted upon the minor. The court found reasonable efforts had been made to eliminate the need for removal and there was clear and convincing evidence that the minor should be removed from appellant's custody. The court ordered reunification services for appellant and the stepmother.

DISCUSSION

I

Appellant contends the petition fails to state facts sufficient to constitute a basis for dependency jurisdiction.

A challenge akin to a demurrer is available in a dependency action to test the sufficiency of the allegations in the

petition. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) To satisfy the notice component of due process, the petition must contain a concise statement of facts which connect the statutory language to the case at issue. (§ 332, subd. (f); *In re Jeremy C.* (1980) 109 Cal.App.3d 384, 397; *In re Stephen W.* (1990) 221 Cal.App.3d 629, 640.)

In reviewing the sufficiency of the pleading, we treat the demurrer as admitting all well-pleaded facts in favor of the petition to determine if DSS has stated a basis for dependency jurisdiction. (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Further, the petition is read as a whole and the parts in context to give it a reasonable interpretation. (*Ibid.*) "This does not require the pleader to regurgitate the contents of the social worker's report into a petition, it merely requires the pleading of essential facts establishing *at least one ground* of juvenile court jurisdiction." (*In re Alysha S., supra*, 51 Cal.App.4th at pp. 399-400, italics added.)

The first ground relied upon here, set forth in section 300, subdivision (b), is that "there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of . . . her parent . . . to supervise or protect the child adequately, [¶] [o]r the willful or negligent failure of the child's parent . . . to supervise or protect the child adequately from the conduct of the custodian with whom the child has been left."

The petition alleged that the minor resided with appellant and the stepmother and that appellant left the minor in the stepmother's care while he worked out of state during the month prior to filing the petition. The petition alleged the minor was subjected to specific and ongoing acts of emotional abuse which eventually resulted in aggressive behavior by the minor. The petition further alleged that, over time, the emotional abuse escalated to specific acts of physical violence perpetrated by the stepmother upon the minor which caused injury, i.e., a bump on the head and bruising, to the minor. The allegations of the petition are sufficient to aver that appellant's failure to protect the minor and negligent failure to protect the minor from the stepmother subjected the minor to substantial risk of serious physical harm.

Although we need only find that DSS pleaded essential facts to establish one ground of juvenile court jurisdiction, it is apparent that the petition also adequately sets forth a second ground under section 300, subdivision (c), i.e., the child "is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression withdrawal or untoward aggressive behavior toward self or others, as a result of the conduct of the parent . . . or who has no parent . . . capable of providing appropriate care." Because the minor lived in appellant's home, the reasonable inference of the allegations of emotional abuse set forth in the petition is that appellant either perpetrated or acquiesced in the systematic humiliation of the minor by

unwarranted severe and degrading punishments for minor offenses, loss of privacy over a period of years and physical and emotional abuse which culminated in the minor's aggression against the stepmother.

The allegations of the petition as set forth above are more than adequate to state a basis for dependency jurisdiction under section 300, subdivisions (b) and (c).

II

Appellant contends substantial evidence does not support the jurisdictional findings or the order removing the minor from his home. We disagree.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence -- that is, evidence which is reasonable, credible and of solid value -- to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L.*, *supra*, at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

a) Jurisdiction

Appellant argues that substantial evidence does not support the juvenile court's jurisdictional findings because each allegation of the petition is not supported by substantial evidence. While we shall address the evidentiary support for each allegation which was sustained, it is the totality of the supporting facts and the evidence presented at trial which must be considered in determining whether the evidence supported the juvenile court's finding that the minor came within the provisions of section 300. (See *In re Troy D.* (1989) 215 Cal.App.3d 889, 904 [substantial evidence supported jurisdiction on minimal pleading plus evidence presented at trial].)

Allegation b-1 contains background facts of the minor's circumstances prior to removal. These facts, of parentage, location of home and identity of those living in the home, were uncontested and generally supported by information provided by the stepmother to DSS. As to the portion of the allegation stating appellant was working out of state for much of the month preceding removal, appellant testified to that fact.

Allegation b-2 states that in October 2004, the minor was spanked by the stepmother who left bruises on the minor's arm and the minor was removed shortly thereafter. These facts were supported by the sheriff's investigation, the minor's statements, Mr. Rendon's testimony and evidence from several witnesses who saw the bruises on the minor's arm.

Allegation b-3 describes the slapping incident at the wedding. Both the minor and the bride testified that the stepmother slapped the minor in the head. The evidence did not support the allegation that the slap was hard enough that the minor lost her footing but the bride said it was hard enough for her to hear it. The minor characterized it as a soft hit, stating that the stepmother would not hit her hard in front of a lot of people. The reasonable inference is that the minor was subjected to a significant level of ongoing physical abuse. The bride further testified that the stepmother treated the minor differently from her own children and was gruff with her.

Allegation b-5 recounted the incident in September 2004 when the stepmother hit the minor on the head with a pot, leaving a bump and resulting in temporary removal. It also includes the incident when the minor was strip-searched by her stepsister because the minor was suspected of stealing. The minor testified about these incidents. The minor's teacher, therapist and a school secretary observed the head injury and the sheriff's deputy took a statement from the stepsister about the strip-search.

Allegation b-6 stated that the stepmother provided false information to Dr. Glidden to mislead him into seeing the minor as more pathological than she was. Respondent concedes there is no evidence the stepmother directly told Dr. Glidden about incidents of sexual abuse of the minor by her biological mother, but the stepmother had made such statements to the minor's

therapist and to the school nurse, whose report containing the information was considered by Dr. Glidden. Documents from the prior case in which the minor was removed from her biological mother contain no suggestion of sexual abuse, only that a sibling was being physically abused and the biological mother had mental health problems, essentially the information conveyed by the stepmother to Dr. Glidden. The stepmother did exaggerate or misreport the minor's behavior, claiming destruction of property, threats, significant thefts and recanting of a physical abuse report. Evidence from the minor and the police reports demonstrate that the stepmother's statements of the minor's supposed thefts and recantation were erroneous. In this connection, the minor's admission, in the stepmother's presence, of a theft from her teacher at school was undercut by the teacher's testimony that no such theft had occurred.

Allegation b-7 described the surveillance camera, removal of the bedroom door and lack of bathroom privacy. The minor and appellant testified to these circumstances and the social worker testified about a team meeting where these matters were discussed by the parents and the treatment team.

Allegation b-8 recounts the April 2004 report of the minor's punishment of having her belongings taken away and having to move rocks. This allegation was supported by the therapy team reports documenting a session with the stepmother and the minor and reiterated in the social worker's reports.

Allegation b-11 relates the minor's attending school without lunch. A school secretary and the school nurse provided evidence in support of this allegation. The school nurse also checked with the minor's therapist who contradicted the stepmother's insistence that making the minor go without lunch was a strategy suggested in counseling.

Allegation b-12 set forth the masking tape incident in 2000. The minor's teacher at the time testified about the details of the incident and the minor's fearful demeanor in the stepmother's presence.

Allegation b-13 recounted the 1999 report of suspected molestation of the then six-year-old minor by another minor residing in appellant's home. Both appellant and the stepmother testified to the incident and the prior report appeared in the current social worker's report.

Allegation b-14 addressed the expression of the minor's alleged severe emotional abuse through her aggressive behavior of stealing and hitting the stepmother. The stepmother made many statements about the minor's alleged thefts, some of which were unfounded and some of which the minor admitted. The stepmother reported the minor's aggressive behavior toward her to the sheriff's deputy who investigated the events which resulted in the minor's removal. Several witnesses testified about the minor's withdrawal and anxiety.

Allegation b-15 refers to the prior dependency case in Fresno County which led to the minor's removal from her

biological mother and placement with appellant. Copies of relevant documents from that case were attached to the fourth addendum. At the outset of the proceedings, the stepmother suggested to the social worker that the biological mother was not entitled to contact with the minor and told Dr. Glidden there was a restraining order which prevented contact. In fact, the Fresno court had ordered visitation when the minor was placed with appellant.

Each of the allegations was supported by substantial evidence. The totality of the evidence before the court showed that the minor's life since coming to live with appellant was characterized by a pattern of unremitting emotional abuse which increased in severity over time and ultimately led to several acts of physical abuse just prior to detention. Again and again punishments out of proportion were meted out for minor infractions to a young child who had experienced neglect prior to placement with appellant. Sympathetic adults who attempted to intervene, like the nurse and the minor's therapist, were cut off from the minor as a result of parental complaints about them. Interestingly, the bus driver, who chose not to pursue the minor's behavior with the stepmother after a single incident, was able ultimately to act to protect the minor. The minor was subjected to degrading conditions, strip-searched and denied any reasonable privacy. These invasions could only have exacerbated her feelings of violation arising from the sexual abuse she suffered in appellant's home. The minor was embarrassed in front

of her peers and threatened with physical abuse. Not surprisingly, she became increasingly withdrawn and ultimately acted out by striking her stepmother. The minor was overly fearful of consequences of her behavior and statements and guarded her responses to adults who questioned her. The stepmother hit the minor on the head with a pot, slapped her and left bruises on her arm after spanking her. The recent evidence of physical abuse followed the stepmother's prior threats to beat the minor for misbehavior. While appellant did not directly inflict physical harm on the minor he did acquiesce or actively engage in behavior which constituted emotional abuse and did not act to protect the minor from the stepmother's increasing physical responses to the minor's infractions. Appellant sabotaged the minor's therapy and his solution to dealing with her was to send her to a high level group home which was far beyond the level of treatment she required. The minor was consistently viewed as a problem to be fixed despite multiple evaluations which clearly indicated a need for services for the whole family. Testimony and reports supported the allegations of the petition and established both grounds for jurisdiction.

b) Removal

"A dependent child may not be taken from the physical custody of . . . her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [that] [¶] [t]here is or would be a substantial danger to the physical health, safety,

protection or physical or emotional well-being of the minor if the minor were returned home" (§ 361, subd. (c).)

The record is clear that, despite efforts by DSS to provide remedial services to appellant and the stepmother, the services were refused and they continued to view the minor as a problem which needed fixing. There had been no changes in the home which would protect the minor. Consequently, there remained a substantial danger to her physical or emotional safety and well-being. (§ 361, subd. (c).)

III

Appellant contends he was deprived of due process by the last minute filing of the subsequent petition because he did not have notice of the new allegations.

"Fundamental to due process is the right to notice of the allegations upon which the deprivation of custody is predicated In other words, a parent is entitled to be apprised of the charges he must meet in order to prepare his case" (*In re Neal D.* (1972) 23 Cal.App.3d 1045, 1048; see *In re Steve W.* (1990) 217 Cal.App.3d 10, 27.)

A subsequent petition in the nature of an amended petition was filed just prior to trial. Appellant objected to the five new factual allegations and sought a continuance or striking of the allegations. As set forth above, only two facts were allowed, i.e., b-3 [slapping the minor at the wedding], on which appellant submitted and b-6 [intentional misstatements to Dr. Glidden to attempt to mislead him about the minor].

The evidence to support the b-3 allegation appeared in the October 2004 addendum to the jurisdictional report. Dr. Glidden's report, which formed the basis for the b-6 allegation, was provided to appellant prior to the minor's removal and the stepmother's statements about the minor's behavior were in the report and the addendum. In both cases, appellant had knowledge of the relevant facts long before the subsequent petition was filed. No denial of due process appears.

IV

Appellant contends the court failed to make reasonable efforts to prevent or eliminate the need for removing the minor from the home.

A minor may not be removed unless "there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody" or "[t]he minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of [the] parent" (§ 361, subd. (c)(1), (c)(3).)

The record shows that DSS repeatedly offered services and intervention to appellant and the stepmother both before and after detention. However, appellant and the stepmother declined to participate in services which would eliminate the need for

removal. Both appellant and the stepmother steadfastly saw the minor as the problem and wanted her "fixed" or placed despite the fact that their own actions or inactions were exacerbating the minor's problems. Although each of the three psychologists who evaluated the minor indicated that the family as well as the minor needed treatment, appellant never participated in parenting or other available services. Services which were offered both prior to removal and in the interim plan could have improved the parent-child relationship and could have permitted the minor to return to the home. Until appellant and the stepmother came to understand that the minor's behavior was a reaction to her treatment in the home and that she was at substantial risk of emotional and physical harm as a result of the stepmother's acts and appellant's failure to protect the minor, the minor could not safely be returned home.

Appellant argues that the minor could have been returned home with a family maintenance plan which included placement in the group home facility he had considered prior to the detention in October 2004. This argument ignores the testimony of several witnesses that the minor did not appear to need the services of a locked group facility and that she was doing well in her current home. The argument is little more than a repackaging of the view that the minor was the problem, rather than the family dynamic which permitted ongoing degradation and emotional and physical abuse of the minor. The fact remains that neither appellant nor the stepmother had made any significant changes in their views or

treatment of the minor. Under the circumstances, the court would have abused its discretion if it had ordered the minor returned home.

DISPOSITION

The judgment of disposition is affirmed.

CANTIL-SAKAUYE, J.

We concur:

BLEASE, Acting P.J.

RAYE, J.